



Attorney General of New Mexico

GARY K. KING

Attorney General

Decembr 10, 2007

ALBERT J. LAMA

Chief Deputy Attorney General

Edward Michael
Acting Chair Bibo Mutual Domestic Water Consumers Association
P.O. Box 2
Pagate, NM 87040

Re: Open Meetings Act complaint

Dear Mr. Michael:

This is our determination regarding the complaint of William Hocker alleging that the Bibo Mutual Domestic Water Consumers Association ("BMDWCA") violated the Open Meetings Act, NMSA 1978, Sections 10-15-1-11("OMA"). I have reviewed the complaint, your response on behalf of the BMDWCA and relevant legal authorities. Based on the information available to us at this time, it appears that the BMDWCA violated OMA as alleged in the complaint.

According to Mr. Hocker, at a June 24, 2007 meeting of the BMDWCA, the presiding officer, Erlinda Saevedra, asked Mr. Hocker, his wife and another individual to leave the meeting and stated that the meeting was a closed meeting for Bibo residents only. Mr. Hocker also alleged that the membership voted to adjourn the meeting and reschedule it as a "closed private meeting" on July 7, 2007 at a private business. Reportedly, Ms. Saavedra warned Mr. Hocker that he should not attend the July 7, 2007 meeting. Mr. Hocker provided a copy of a written notice for the July 7, 2007 meeting which states, "BMDWCA MANDATORY CLOSED MEETING FOR BIBO RESIDENTS ONLY" and includes an agenda listing "Financial Report New Board Election Other Important Issues(sic)."

On August 27, 2007 you called on behalf of BMDWCA in response to my inquiry letter. You acknowledged that the June 24, 2007 meeting of BMWDCa was closed and reset after a heated discussion between the presiding officer and the Hockers. You stated that there are no minutes of that meeting or the July 7 meeting. You acknowledged that the copy of the notice Mr. Hocker provided was posted to advertise the July 7 meeting. You stated that a land grant representative who was not a Bibo resident attended and was allowed to stay at the July meeting.

BMDWCA is a public body subject to OMA. See NMSA 1978, Section 10-15-1(B). Ms. Saavedra's request that certain members of the public leave the June 24 meeting violated OMA, specifically Section 10-15-1(A). Under that provision, "[a]ll meetings of any public body...shall be public meetings, and all persons desiring shall be permitted to attend and listen to the proceedings." In our telephone conversation of August 27, 2007, you acknowledged that the meeting was improperly closed.

You also conceded that there were no minutes of the June 24 or the July 7 meetings. The failure to keep minutes violated Section 10-15-1(G) OMA, which states that a public body "shall keep written minutes of all its meetings".

The notice of the July 7 closed meeting violates OMA in two respects. First, the notice fails to provide a sanctioned reason for a closed meeting. Closure of public meetings is permitted only for specified exempted subjects set out in Section 10-15-1(H). The purposes of the July 7 meeting listed in the notice- "Financial Report" and "New Board Election" are not included among exemptions to OMA. Those topics should have been addressed in a public meeting.

Second, the agenda included in the notice lists "Other Important Issues." This description is too vague to provide reasonable notice of the subjects to be discussed at the meeting and is therefore is a violation of Section 10-15-1(F) of OMA. That provision requires that the agenda for a meeting contain "a list of specific items of business to be discussed or transacted at the meeting" (emphasis added).

Actions by a public body taken at a meeting held in violation of the OMA are invalid. See NMSA 1978, Section 10-15-3(A). The OMA allows public bodies to correct violations, and any meeting held to correct a violation must include a summary of comments made at the meeting at which the violation occurred. NMSA 1978, Section 10-15-3(B). You have assured me that the BMDWCA would take steps to correct its violations by holding a public meeting, after proper notice, to elect officers and address any other business conducted at the July 7 meeting in violation of the OMA. Please provide me with a copy of the notice, agenda and minutes for the meeting held to correct the violations.

For your reference and guidance, a copy of the Attorney General's OMA Compliance Guide is enclosed. If you have further questions regarding this determination, or about the OMA in general, do not hesitate to contact our office.

Sincerely,



Melanie Carver,
Assistant Attorney General

Cc: William Hocker